



प्रधानआयुक्त, सीमाशुल्क (सामान्य) का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL),
नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई- 400 001.
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001.

संचिका सं./F. No.- Gen/CB/134/2022-CBS

आदेश दिनांक/Date of Order: 23.06.2023

CAO No. 21/CAC/PCC(G)/SJ/CBS Adj

जारी दिनांक/Date of issue: 26.06.2023

संख्या:

DIN: 20230677000000888EA0

द्वारा जारी : सुनील जैन

Issued By : Sunil Jain

प्रधान आयुक्त, सीमाशुल्क(सामान्य)

Pr. Commissioner of Customs(Gen.),

मुंबई -400 001

Mumbai - 400 001.

ORDER-IN-ORIGINAL मूल आदेश

ध्यान दीजिए/ N.B. :

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।
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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के **7.5%** के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (कार्यविधि) नियमावली, १९८२, के प्रावधानों के अंतर्गत, यथोत्तखंडपीठ में स्वीकार्य है।

An appeal against this order lies with the Customs, Central Excise and Service Tax Appellate Tribunal in terms of section 129A(1B)(i) of the Customs Act, 1962 on payment of **7.5%** of the amount demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. It shall be filed within three months from the date of communication of this order. The appeal lies with the appropriate bench of the Customs, Central Excise and Service Tax Appellate as per the applicable provisions of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्रीय खंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक 31.05.2018 के अनुसार न्यायिक आदेश तदोउ प्रांत न्याय निर्णयन अधिकारी *functus officio* बन जाता है

It is informed that the jurisdiction of the Adjudicating Authority stands alienated with the conclusion of the present adjudication order and the Adjudicating Authority attains the status of '*functus officio*' as held by Hon'ble CESTAT, Mumbai in its decision in the case of M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai vide Order No. A/86617-86619/2018 dated 31.05.2018.

4. यदि एक ही प्रकरण में उसी पक्षकार के विरुद्ध कई कारण बताओ नोटिस लगाकर आदेश पारित किया जाता है तो प्रत्येक प्रकरण में अलग अपील दायर की जाए।

In case where an order is passed by bunching several show cause notices on an identical issue against the same party, separate appeal may be filed in each case.

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क (अपीलस) नियमावली, १९८२ के नियम 6 के तहत निर्धारित है एवं उसी नियमावली के नियम 3 के उपनियम 2 में उल्लेखित व्यक्ति द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

The Appeal should be filed in Form C.A.-3 prescribed under Rule 6 of the Customs (Appeals) Rules, 1982 and shall be signed and verified by the person specified in sub-rule 2 of rule 3 rules ibid.

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवलागाए गए जुर्माने की राशि रु. पाँच लाख या इस से कम होतो रु. 1000/-, (ii) यदि यह राशि रु. पाँच लाख से अधिक हो किंतु पचास लाख से अधिक न होतो रु. 5000/- एवं (iii) यदि यह राशि रु. पचास लाख से अधिक होतो रु. 10000/- के शुल्क का भुगतान क्रॉस्ड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

A fee of (i) Rs. 1000/- in case where the amount of duty and interest demanded and the penalty imposed in the impugned order appealed against is Rupees Five Lakhs or less, (ii) Rs. 5000/- in case where such amount exceeds Rupees Five Lakhs but not exceeding Rupees Fifty Lakhs and (iii) Rs. 10000/- in case where such amount exceeds Rupees Fifty Lakhs, is required to be paid through a crossed bank draft in favour of the Assistant registrar of the Bench of the Tribunal on a branch of any nationalized bank located at the place where the bench is situated and demand draft shall be attached to the Appeal.

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 1870 की अनुसूची मद 6 के तहत निर्धारित रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए एवं इसके साथ संलग्न इस आदेश की उक्त प्रति में रु. 50 का कोर्ट फी स्टैम्प लगा होना चाहिए।

Once copy of the Appeal should bear a Court Fee Stamp of Rs. 50 and said copy of this order attached therein should bear a Court Fee Stamp of Rs. 50 as prescribed under Schedule item 6 of the Court Fee Act, 1870, as amended.

BRIEF FACTS OF THE CASE

M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. having PAN based Registration No. AAACG5078RCH001, holding a regular Customs Broker License No. 11/581 (hereinafter referred as CB/Customs Broker) issued by Commissioner of Customs, Mumbai under Regulation 10(1) of the Customs House Agents Licensing Regulations (CHALR), 1984 [Now regulation 7(2) of Customs Broker Licensing Regulations (CBLR, 2018)] and such they are bound by the regulations and conditions stipulated therein.

2. An offence report dated 22.04.2022 was received from SIIB(I)/JNCH in Customs Broker Section. Vide the said offence report, it was informed that on the basis of specific information from Directorate of Revenue, Nhava Sheva-I, Mumbai Zonal Unit, that the goods imported vide Bill of Entry No. 7559043 dated 19.02.2022 were branded shoes and not unbranded shoes as declared, 04 containers were put on hold. On the basis of above information, SIIB (I) JNCH was investigating two cases pertaining to Bills of Entry bearing numbers 7559043 dated 19.02.2022, 7524351 dated 16.02.2022, 7556398 dated 18.02.2022 and 7556399 dated 18.02.2022 filed by M/s. Ghanshyam Patel Freight Forw. Pvt. Ltd. on behalf of M/s Nihalika Overseas and 7667367 dated 27.02.2022, 7667212 dated 27.02.2022, 7667135 dated 27.02.2022 and 7673537 dated 28.02.2022 filed by M/s. Ghanshyam Patel Freight Forw. Pvt. Ltd. on behalf M/s U & S Business Components Private Limited.

2.2. The Bills of Entry mentioned above were examined under Panchnamas, details of which are mentioned as under.

2.2.1 Goods under Bill of Entry 7559043 dated 19.02.2022 were examined under Panchnama dated 03.03.2022 & 04.03.2022. Examination revealed that undeclared Branded Shoes of Nike, Asics, Reebok, Adidas and New Balance were stuffed into Container in place of declared unbranded Shoes.

2.2.2 Goods under Bill of Entry 7524351 dated 16.02.2022 were examined under Panchnama dated 05.03.2022 and 06.03.2022. Examination revealed that declared Optical Frames were excess in quantity and grossly undervalued.

2.2.3 Goods under Bill of Entry 7556398 dated 18.02.2022 and 7556399 dated 18.02.2022 were examined under Panchnama dated 11.03.2022. Examination revealed that knitted polyester fabric was mis-declared as cotton knitted dyed fabric.

2.2.4 Goods under Bill of Entry 7667135 dated 17.02.2022 and 7673537 dated 28.02.2022 were examined under Panchnama dated 26.03.2022. Examination revealed that undeclared Branded Shoes of Nike, Asics, Reebok, Adidas and Puma were stuffed into Container in place of declared unbranded Shoes.

2.2.5 Goods under Bill of Entry no. 7667367 dated 27.02.2022 and 7667212 dated 27.02.2022 were examined under Panchnama dated 29.03.2022. Examination revealed that Ladies Brassieres and Ladies Brief were grossly mis-declared in terms of quantity.

Thus, the examination of subject goods revealed that the goods were mis-declared in terms of Brand, Quantity and Value.

2.3 During the course of investigation, a search was conducted on 04.03.2022 at the office of M/s Ghanshyam Patel Freight Forw. Pvt. Ltd situated at A-346, Antop Hill, Warehouse Complex, 3 FL, Vidyalankar College, Wadala East, Mumbai, but the office was found to be a childhood adventure workshop with the name 'Mapayah'. Another search was also conducted at the office of M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. situated at office no. 1 and 2, Cotton Exchange Building near Cotton Green (east), Mumbai-400033 which was the office address as per the records available with the department. The office was found to be closed and it was learnt during the search that the office was vacated by Customs Broker in September, 2018.

2.4 During the course of investigation, statement of Shri Jayesh Patel, Director of CB firm M/s. Ghanshyam Patel Freight Forw. Pvt. Ltd. was recorded wherein he inter alia stated that his plan was to shift the office on temporary basis due to ill health of parents. However due to the pandemic he could not shift back, since it was only temporary therefore, he did not update the address with Mumbai Customs, since he would move back to the same office in Cotton Green. The office location was changed in January, 2019 whereas the Corona pandemic started in January, 2020. He further stated that due to an alert on their License from Air Cargo Customs, they were not filing any export documents from their firm for last 11 months. Since their clients were with them for last 03 decades and they could not lose them, they continued to serve their clients by deputing the export clearance work to M/s. Mayuraa Shipping Services (CHA No. 11/2062) and in turn they deputed their import clearance to M/s. Ghanshyam Patel Freight Forw. Pvt. Ltd.

2.5 During the course of investigation, it was found that Customs Broker is habitual of violating the provisions of the Customs Brokers License Regulations, 2018 as he had not fulfilled his obligation mentioned in 10(o) of the Customs Brokers License Regulations, 2018 by not informing the department regarding change in the office address; that Shri. Jayesh G. Patel, Director of M/s Ghanshyam Patel Freight Forw. Pvt. Ltd., knowingly and habitually violated the Customs Brokers License Regulations, 2018. As per Regulation 10(o) of CBLR, 2018, it is an obligation on Customs Broker that they shall inform any change of postal address, telephone number, e-mail etc. to the Deputy

Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days.

2.6. The investigation conducted revealed that the goods were mis-declared in terms of Brand, Quantity and Value. Therefore, it appeared that the importer was not advised by CB regarding laws related to Intellectual Property Right, Customs Act, 1962 and Customs Valuation (Determination of Value of imported Goods) Rules, 2007. If CB M/ S. Ghanshyam Patel Freight Forw. Pvt. Ltd had properly advised to the importers i.e. M/s Nihalika Overseas and M/s U & S Business Components Private Limited regarding the provisions of Intellectual Property Right, Customs Act, 1962 and Customs Valuation (Determination of Value of imported Goods) Rules, 2007 the importers would have declared the goods as per law. The non-compliance of laws, rules, regulation by the importers was never brought to the notice of the Proper Officer by the CB M/s Ghanshyam Patel Freight Forw. Pvt Ltd. Therefore, it appeared that CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd have violated the Regulation 10(d) of CBLR, 2018.

2.7. From the facts stated above, it appeared that the CB M/ S. Ghanshyam Patel Freight Forw. Pvt. Ltd (11/581) have failed in fulfilling the obligations as mandated under CBLR, 2018 and appeared to have violated the regulation 10(d) & 10(o) of CBLR, 2018.

• Regulation 10 (d) of CBLR, 2018:

“A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”

• Regulation 10 (o) of CBLR, 2018:

“A Customs broker shall inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days;”

3. SUSPENSION OF LICENCE: -

In view of the facts stated above, CB, M/s Ghanshyam Patel Freight Forw. Pvt. Ltd (11/581) appeared to be liable for their acts of omission and commission leading to contraventions of the provision under Regulation 10(d) & 10(o) of the Customs Brokers Licensing Regulations, 2018 which amounts to breach of trust and faith reposed on the CB by the Customs. M/s Ghanshyam Patel Freight Forw. Pvt. Ltd (11/581) have, therefore, prima facie, failed to fulfil their responsibilities as per provisions of regulations of CBLR, 2018. Hence, in exercise of powers conferred under the provisions of Regulation 16(1) of CBLR, 2018, license of Customs Broker, M/s Ghanshyam Patel Freight Forw. Pvt. Ltd (11/581) was suspended by Principal Commissioner of Customs, NCH, Mumbai vide order no. 11/2022-23 dated 10.06.2022. CB was granted opportunity of personal hearing in the matter and CB attended the same on 24.06.2022. Based on submissions given by CB during Personal Hearing, the suspension of CB licence was revoked vide Order No. 17/2022 dated 29.06.2022.

It is pertinent to mention that the CB licence (11/581) has already been suspended in another case vide Order No. 36/2022-23 dated 18.10.2022 and suspension was continued vide Order No. 43/2022-23 dated 29.11.2022 passed by the Principal Commissioner of Customs (G), NCH.

04. SHOW CAUSE NOTICE

M/s Ghanshyam Patel Freight Forw. Pvt. Ltd (11/581) was issued a Show Cause Notice (SCN) No. 21/2022-23 dated 18.10.2022, by the Principal Commissioner of Customs (General), NCH, Mumbai, Zone- I. asking them to show cause as to why the licence bearing no. 11 /581 issued to them should not be revoked and security deposited should not be forfeited and/or penalty should not be imposed upon them under Regulation 14 read with 17 & 18 of the CBLR, 2018 for their failure to comply with the provisions of CBLR, 2018, as elaborated in the Show Cause Notice. They were given an opportunity to appear for a personal hearing on the date as may be fixed and to produce proof of evidence/documents if any, in their defence to the Inquiry Officer Shri. Devashya J Jyotirmy, Deputy Commissioner of Customs, who was appointed as an Inquiry Officer to conduct inquiry under regulation 17 of CBLR, 2018.

05. INQUIRY REPORT

Inquiry Officer submitted inquiry report dated 11.04.2023 wherein the charges against CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd (11/581) i.e. violation of Regulation 10(d) & 10(o) of CBLR, 2018 were held '**proved**'.

5.2 Inquiry Officer submitted that a letter dated 14.12.2022 was sent to the Customs Broker M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. to submit reply to the Show Cause Notice within 30 days and to appear for personal hearing before him on 21.12.2022. CB attended the personal hearing and submitted letter dated 21.12.2022 wherein he stated that: -

(I) With regards to change in office address, he stated that in this instance due to his father's ill health in end 2018, he decided to work from home for some time even though the office at Cotton Green was operational till most of 2019. When they decided to move back to the office, the lockdown due to the pandemic came into force. Then in January 2021 they decided again to move back and the 2nd lockdown came and then the 3rd wave. In all this even though, they informed the BCBA/FFFAI about their address change however, with the clear intention of moving back to the Cotton Green address that they will anyways be operating from there, through a clear oversight and without any ill-intention they did not inform the Customs and they admitted this first lapse on their part in four decades of our role as a CB. However, they have already submitted the necessary change of address letter and supporting documents to our office and the address has now been changed accordingly.

(II) In regard to the import shipments of M/s. Nihalika Overseas and M/s. U & S Business Components P. Ltd., CB stated and clarified that they had only filed two B/E of M/s. Nihalika Overseas vide B/E. Nos. 7559043 dated 19.02.2022 and 7524351 dated 16.02.2022. The other two B/E Nos. 7556398 and 7556399 dated 18.02.2022 were not filed by them, but by some other CB, not known to them. The four B/Es mentioned of M/s. U & S Business Components P. Ltd. have been correctly mentioned.

(III) Before this, they have never handled these shipments inspite of which they have complied as always with obtaining the required documents from the respective clients including the Authority letters which clearly mentions that the client is authorizing them as their CB for their shipments and they undertake that if any issues arise only they will be solely responsible and the CB is totally indemnified from any consequences. Both these importers have furnished their KYC and Authority and Indemnity letters to them prior to starting their work.

(IV) The said B/Es were filed by them in accordance to documents submitted by importers. Moreover, to mention that even though the valuation aspect may be low, the goods found were as per declared in the documents and not contraband or any other illegal nature. The Shoes shipments had shoes in the containers and the undergarments shipments had undergarments in the containers and the same with the Tattoo spare parts of Nihalika Overseas.

However, they do realize the misdeclaration and pricing aspect was a gross error. The misdeclaration of cargo was totally uninformed to them and they were kept in the dark on this since the CB cannot see the goods unless they are actually and physically present. Hence there is no question that they have any hand in the misdeclaration of the goods or with the shipments. They have prepared the BEs in accordance to the documents provided to them by the Importers.

5.3 COMMENTS OF THE INQUIRY OFFICER: -

IO submitted that he has gone through the facts of the case, the reply to the show cause notice, the submissions during the hearings by the Customs Broker on 21.12.2022. Inquiry Officer discussed the charge as under:

5.3.1 Articles of charge- I: - (Regulation 10(d) of CBLR 2018)

In this regard, Inquiry Officer submitted that goods were mis-declared in terms of Brand, Quantity and Value. Therefore, it appeared that the importer was not advised by CB regarding laws related to Intellectual Property Right, Customs Act, 1962 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. If CB M/s. Ghanshyam Patel Freight Forw. Pvt. Ltd had properly advised to the importers M/s Nihalika Overseas and M/s U & S Business Components Private Limited regarding the provisions of Intellectual Property Right, Customs Act, 1962 and Customs Valuation (Determination of Value of imported Goods) Rules, 2007, the importers would have declared the goods as per law. The non-compliance of laws, rules, regulation on behalf of the importers was never brought to the notice of the Proper Officer by the CB M/s Ghanshyam Patel Freight Forw. Pvt Ltd.

The Customs Broker in their written submissions and submissions during personal hearing have stated that they do realize the misdeclaration and pricing aspect was a gross error.

Inquiry Officer found that despite of knowing the discrepancies, the CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. has filed B/Es to clear the goods. It was duty of the Customs broker to bring these discrepancies to the notice of the Customs officers in Nhava Sheva at the time of import of the said goods, but they appeared to have not done their duty. From the above, it is concluded that the CB has violated the Regulation 10(d) of the CBLR, 2018 and IO held that the Article of Charge alleging violation of Regulation 10(d) of CBLR, 2018 as "Proved".

5.7.2 Articles of charge- II: - (Regulation 10(o) of CBLR 2018)

In this regard, inquiry officer submitted that during the course of investigation search was conducted at the office of M/s. Ghanshyam Patel

Freight Forw. Pvt. Ltd situated at A-346, Antop Hill Warehouse Comp 1 ex,3 FL, Vidyalankar College, Wadala East, Mumbai, but the office was found to be a childhood adventure workshop with the name 'Mapayah'. Another search was conducted at the office of M/s Ghanshyam Patel Freight Pvt Ltd situated at office no. 1 and 2, Cotton Exchange Building near Cotton Green(East), Mumbai-400033 which was the office address as per the records available with the department. The office was found to be closed and it was learnt during the search that the office was vacated by Customs Broker, in September 2018.

IO further submitted that Shri Jayesh Patel, Director of CB M/s Ghanshyam Patel Freight Forw. Pvt Ltd accepted in his statement dated 19.02.2022 that his plan was to shift the office on temporary basis due to ill health of parents. However, due to the pandemic he could not shift back. Since it was only temporary and would move back to the same office in Cotton Green, therefore, he did not update the address with Mumbai Customs. CB submitted in his submission that Corona Pandemic as the reason for non-intimation regarding shifting of office premises does not hold ground as it was shifted in 2018 or 2019 but Corona Pandemic situation prevailed in India from 2020 onwards. It appeared that CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. failed to inform the change of postal address to the Deputy Commissioners of Customs or Assistant Commissioner of Customs, this shows that CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. Have violated Regulation 10(o). Accordingly, IO held that the Article of Charge alleging violation of Regulation 10(o) of CBLR, 2018 as "Proved".

06. SUBMISSIONS BY CB IN HIS DEFENCE: -

CB submitted his written submission dated 29.05.2023 in reply to Inquiry report dated 11.04.2023 wherein he reiterated his submission dated 21.12.2022 and submitted following points.

- i. Their firm is in the Customs clearing business for over four decades. They specialize only in export clearances by Sea and as per the Customs record, they have never had any inquiry against them for a single export shipment in the last 40 years of business. They were the pioneers of starting containerized cargo in the 90s. So far, they have handled business of over 700-800 clients and they were the largest CB for Soviet Union (USSR) trade in India doing almost 800-1000 containers a month. They had staff strength of over 100 people.
- ii. They have been handling import shipments for only 10-11 months at JNPT and have handled shipments of various goods from Garments, Machinery, spare parts, vinyl films and many other such genuine imports and commodities. In this case also they had clearly informed both the clients of the nature of the cargo and low pricing however the clients assured them

that the goods are purchased in stock lots from China and hence the pricing is genuine and low and the goods are exactly as declared in their documents. They had verified that M/s. Nihalika Overseas was an old importer holding IEC since 2012 and M/s. U & S Business Components P. Ltd. (IEC since 2017) had a decent set up with office in Delhi and shops in Mahipalpur Delhi and Ahmedabad and also supplying goods to AIIMS Delhi.

- iii. The importer M/s U & S Business Components P. Ltd. (Mr. Uma Shankar Sharma) had directly approached them and offered them business for clearance of their import cargo. On them furnishing their KYC documents and in the ongoing pandemic lockdown we had yet managed to carry out the physical verification of the same prior to commencement of the business. Importers have also given to them CB Authority Letter authorizing them for clearance of their shipments and also indemnifying them for any issues/consequences that may arise in their import shipments.
- iv. CB mentioned an Order dated 03.02.2023, M/s. Sal Chhaya Impex P. Ltd. V/S Commissioner of Customs (Airport & General) which states the obligations by a CB and the difficulties a CB can face having to constantly maintain KYC records etc of the client which is not particularly necessary on part of the CB.
- v. CB mentioned a judgement of Hon'ble CESTAT, Chennai in the case of M/s Chakiat Agencies and M/s. Soji Kuriakose versus Commissioner of Customs Chennai wherein it states that the CB cannot be expected to ascertain the nature of the goods and cannot be penalized for this. Hence there is no question that they have any hand in the misdeclaration of the goods or with the shipments. They have prepared the B/Es in accordance to the documents provided to them by the importers.
- vi. The Importer/Supplier even have approached the High Court for this matter to seek permission of the re-export of the four containers since as per them the goods were wrongly imported by mistake due to the Christmas rush and the cargo was wrongly sent to India. Hence it should be seen that they absolutely have no role in any of this and the importers themselves have indemnified them from any consequences arising out of any of their shipments.
- vii. In the case of M/s. Nihalika Overseas the importer himself was present and has completed all formalities and is ready to even taken deliveries of his cargo after payment of the difference in duty etc. Hence it should be seen that CB absolutely have no role in any of this.

- viii. CB stated that the said importer intentionally concealed the factual details of the shipments and misguided them at every level of the shipment.
- ix. As a CB, they have fulfilled each and every procedure and process of the import clearances and even after the cargo was detained, they have co-operated in every way in furnishing all documents to the Customs, appeared for the statements as and when summoned, appeared for the PH at all times and also submitted their written submissions and also been present for the shipment's examinations etc as directed by the concerned officers. They have given their complete co-operation in all matters as is required by a CB.
- x. In fact, since the above incidents, they have totally discontinued clearance of import shipments since March 2022 as they cannot favour such malpractices again and keep their clean and clear reputation which they have built with great efforts in the past 40 years at stake and spoil their future business with clients whom they are serving for the last many years. They undertake that they have not done any import clearances in the past over one year and would not do so in the future as well for which they are even willing to furnish an undertaking to this office.
- xi. CB mentioned the Advisory No. 1/2022 dated 29.12.2022 issued by the Office of the Principal Commissioner of Customs, NCH, Mumbai which clearly states that the CB should not be a part the SCN and not be penalized or held responsible in any way for any issues related to shipments, etc,
- xii. CB requested to consider all of the above and look at their clean history and merits to take a sympathetic approach in the above matter.

7. PERSONAL HEARING & RECORDS OF PERSONAL HEARING: -

A personal hearing was granted by Principal Commissioner of Customs, NCH, Mumbai to Customs Broker on 31.05.2023. The CB attended the personal hearing through virtual mode and reiterated his submission dated 29.05.2023. CB stated that they specialize only in export clearance. The non-intimation of address change was due to over-sight and without any ill intentions. Regarding the import clearance, CB stated that they have never handled import clearance in past and after the incidents they have totally discontinued clearance of import consignments since March, 2022. CB further submitted that they promise to adhere to all rules and regulations of CBLR, 2018 in the future and requested to allow them to continue to do business as suspension affects their livelihood.

8. DISCUSSION AND FINDINGS: -

I have carefully gone through the case, offence report dated 22.04.2022, the Show Cause Notice dated 18.10.2022, material facts on record, Inquiry officer's report dated 11.04.2023, submissions of CB and examined the role and conduct of CB in the case before me.

8.2. The charges were levelled against the CB i.e. violation of Regulation 10(d) & 10(o) of CBLR, 2018 made vide Show Cause Notice No. 21/2022-23 dated 18.10.2022 issued by Pr. Commissioner of Customs (General), NCH, Mumbai and the Inquiry Officer held all charges i.e. violation of Regulation 10(d) & 10(o) of CBLR, 2018 as 'proved'.

8.3 From the facts stated in offence report dated 22.04.2022 and SCN dated 18.10.2022, it appeared that the CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (CB No. 11/581) failed to fulfil the obligations of a Customs Brokers as mandated under CBLR, 2018 and violated the regulations 10(d) & 10(o) of CBLR, 2018.

8.4 I refrain from reproducing the brief facts of the case which have already been discussed above. I, now examine the charges in the SCN sequentially. It has been alleged that the CB did not exercise due diligence in discharging their obligation as required under Regulations 10 (d) and 10(o) of CBLR, 2018.

8.4.1 With regard to violation of regulation 10(d) of CBLR, 2018: -

"A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"

As per the offence report, during the examination of goods covered under Bill of Entry 7559043 dated 19.02.2022, undeclared Branded Shoes of Nike, Asics, Reebok, Adidas and New Balance were found in place of declared unbranded Shoes and goods covered under Bill of Entry 7524351 dated 16.02.2022 Optical Frames were found excess in quantity and grossly undervalued. Thus, the offence report revealed that the goods were mis-declared in terms of Brand, Quantity and Value. The imported goods were found to be in violation of IPR (Intellectual Property Right) rules, Customs Act, 1962 and Customs Valuation (Determination of Value of imported Goods) Rules, 2007.

During the course of Investigation, statement of Shri Jayesh Patel, Director of CB firm M/s. Ghanshyam Patel Freight Forw. Pvt. Ltd. was recorded wherein he inter alia stated that due to an alert on their License from Air Cargo Customs, they were not filing any export documents from their firm for last 11 months. Since their clients were with them for last 03 decades and they could not lose

them, they continued to serve their clients by deputing the export clearance work to M/s. Mayuraa Shipping Services (CHA No. 11/2062) and in turn they deputed their import clearance to M/s. Ghanshyam Patel Freight Forw. Pvt. Ltd.

The CB submitted that they had clearly informed the clients about the nature of the cargo and low pricing, however the clients assured them that the goods were purchased in stock lots from China and hence the pricing is genuine and low and the goods are exactly as declared in their documents.

IO submitted in his inquiry report that despite of knowing the discrepancies, the CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. has filed B/Es to clear the goods. It was duty of the Customs broker to bring these discrepancies to the notice of the Customs officers in Nhava Sheva at the time of import of the said goods, but they appeared to have not done their duty.

I find that goods were found mis-declared in terms of Brand, Quantity and Value which shows the violation of IPR (Intellectual Property Right) rules, Customs Act, 1962 and Customs Valuation (Determination of Value of imported Goods) Rules, 2007. I also find from the statement of Shri Jayesh Patel, Director of CB firm M/s. Ghanshyam Patel Freight Forw. Pvt. Ltd. that due to an alert on their License from Air Cargo Customs, they were not filing any export documents from their firm for last 11 months. This shows that the Customs Broker's licence was already under scrutiny of the department.

From the above facts, I find that there were many Bills of Entry where gross misdeclaration were found in term of brand, value and quantity of imported goods. I also find that due to an alert on CB's License from Air Cargo Customs, they were not filing any export documents, which shows that CB's licence was under scrutiny by way of imposition of alert on their licence from Air Cargo Customs. CB also did not mention the reasons for imposing alert on their licence by Air Cargo Customs. CB mentioned that they deputed their export clearance work to other CB and in turn they received their import clearance work. I find that getting business from anyone doesn't resolve CB from his responsibilities and duties reposed upon him under CBLR, 2018. The charged CB never brought any non-compliance of any importer to the notice of Deputy Commissioner of Customs which clearly shows that the charged CB firm failed to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, CB should have brought the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(d) of CBLR, 2018 as 'proved' and thus I hold that the CB has violated the provisions of Regulation 10(d) of CBLR, 2018.

8.4.2 With regard to violation of regulation 10(0) of CBLR, 2018: -

"A Customs broker shall inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days;"

In the offence report, it is mentioned that during the course of investigation, a search was conducted on 04.03.2022 at the office of M/s Ghanshyam Patel Freight Forw. Pvt. Ltd situated at A-346, Antop Hill, Warehouse Complex, 3 FL, Vidyalankar College, Wadala East, Mumbai, but the office was found to be a childhood adventure workshop with the name 'Mapayah'. Another search was also conducted at the office of M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. situated at office no. 1 and 2, Cotton Exchange Building near Cotton Green (east), Mumbai-400033 which was the office address as per the records available with the department. The office was found to be closed and it was learnt during the search that the office was vacated by Customs Broker, in September, 2018. Shri Jayesh Patel, Director of CB M/s. Ghanshyam Patel Freight Forw. Pvt. Ltd. in his statement dated 19.02.2022 stated that his plan was to shift the office on temporary basis due to ill health of parents. However due to the pandemic he could not shift back, since it was only temporary therefore, he did not update the address with Mumbai Customs, since he would move back to the same office in Cotton Green. The office location was changed in January, 2019 whereas the Corona pandemic started in January, 2020.

CB submitted in his defence that in this instance due to his father's ill health in end 2018, he decided to work from home for some time even though the office at Cotton Green was operational till most of 2019. When they decided to move back to the office, the lockdown due to the pandemic came into force. Then in January 2021 they decided again to move back and the 2nd lockdown came and then the 3rd wave. In all this even though they informed the BCBA/FFFAI about their address change however with the clear intention of moving back to the Cotton Green address that they will anyways be operating from there, through a clear oversight and without any ill-intention they did not inform the Customs and they admit this first lapse on their part in four decades of their role as a CB. However, they have already submitted the necessary change of address letter and supporting documents to concerned office and the address has now been changed accordingly.

IO submitted in his inquiry report that CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. failed to inform the change of postal address to the Deputy Commissioners of Customs or Assistant Commissioner of Customs.

I find that during the course of investigation, searches were conducted at two offices of M/s Ghanshyam Patel Freight Forw. Pvt. Ltd but one office was found to be a childhood adventure workshop with the name 'Mapayah' and another office which was the office address as per the records available with the department was found to be closed and it was learnt during the search that the office was vacated by Customs Broker, in September, 2018. CB submitted that they informed the BCBA/FFFAI about their address change but I do not find any reason why they did not inform the Customs Department (Licensing Authority) about change in his office address at the same time.

From the above facts, I find that it was the duty of CB to inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days. I find that the charged CB should have informed within two days of changing the address but charged CB failed to inform the change of postal address to the Deputy Commissioners of Customs or Assistant Commissioner of Customs even after passing so much time. Therefore, I find that the charge against the Customs Broker for violation of the Regulation 10(o) of CBLR, 2018 as 'proved' and thus I hold that the CB has violated the provisions of Regulation 10(o) of CBLR, 2018.

09. Further, I rely on the following judgements and hold that in the instant case, CB, M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (CB No. 11/581) has failed to adhere to the responsibilities as was expected of them in terms of the Regulations made under CBLR, 2018 and therefore rendered themselves liable for penal action under CBLR, 2018.

9.1 Ratio of The Hon'ble Tribunal judgement in the case of Rubal Logistics Pvt. Ltd. Vs. Commr. of Cus. (General), New Delhi reported in 2019 (368) E.L.T. 1006 [Tri. – Del.] is fairly applicable in the present issue. The relevant para 6.1 of the said judgement are as under:

6.1 *These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advice the client accordingly. Though the CHA was accepted as having no mensrea of the noticed misdeclaration/under-valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CHA definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the*

importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein”.

9.2 Further, the Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in civil appeal no. 2940 of 2008 approved the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

“A Custom Broker occupies a very important position in the customs House and was supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies and to ensure made under CBLR, 2013 and therefore rendered themselves liable for penal action under CBLR, 2013 (now CBLR, 2018)”.

9.3 Similarly, in case of M/s Cappithan Agencies Versus Commissioner of Customs, Chennai-Viii, (2015(10) LCX 0061), the Hon'ble Madras High Court had found that

- i. *The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of*

licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.

- ii. In view of the above discussions and reasons and the finding that the petitioner has not fulfilled their obligations under above said provisions of the Act, Rules and Regulations, the impugned order, confirming the order for continuation of prohibition of the licence of the petitioner is sustainable in law, which warrants no interference by this Court. Accordingly, this writ petition is dismissed.

10. In a regime of trade facilitation, a lot of trust is being placed on the Customs Broker who directly deals with the importers/exporters. Failure to comply with regulations by the CB mandated in the CBLR gives room for unscrupulous persons to get away with import-export violations and revenue frauds. In this case, it is noticed that the charged CB, M/s Ghanshyam Patel Freight Forw. Pvt. Ltd., (CB No. 11/581) acted in violation of Regulation 10(d) and 10(o) of the CBLR, 2018, by not advising his client to comply with the provisions of Intellectual Property Right, Customs Act, 1962 and Customs Valuation (Determination of Value of imported Goods) Rules, 2007. CB also failed to inform the department regarding change in the office address which clearly prove that CB has violated Regulation 10 (d) and 10(o) of CBLR 2018 with mens rea.

11. I hold that the proof of charges in inquiry are acceptable and tenable based on the available evidence, the facts and circumstances of the case and judicial pronouncement mentioned supra which certainly warrant penal action against the CB. Therefore, for their acts of omission and commission, CB M/s Ghanshyam Patel Freight Forw. Pvt. Ltd., (CB No. 11/581) is held liable and guilty for not advising his client regarding the provisions of the Customs Act, 1962, other allied Acts and the rules and regulations thereof i.e. Intellectual Property Right and Customs Valuation (Determination of Value of imported Goods) Rules, 2007. I hold that the CB has failed to discharge duties cast upon

them with respect to Regulation 10(d) and 10(o) of CBLR, 2018 and are liable for penal action. Accordingly, I pass the following order.

ORDER

13. I, Principal Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 17(7) of the CBLR, 2018, pass the following order:

- (i) I hereby impose penalty of Rs 50,000/- (Rupees Fifty Thousand only) on M/s Ghanshyam Patel Freight Forw. Pvt. Ltd., (CB No. 11/581) (PAN No. AAACG5078RCH001) under Regulation 18 of the CBLR, 2018.
- (ii) I note that entire amount of security deposit furnished by the CB has already been forfeited in another case vide Order-In-Original No. 20/CAC/PCC(G)/SJ/CBS(Adj) dated: 22.06.2023 under Regulation 14 of the CBLR, 2018. I hereby order deemed forfeiture of the entire amount of security which shall come into force if any contrary decision is taken at any higher appellate forum in the above case.
- (iii) The CB License No.11/581 is already revoked in another case vide Order-In-Original No. 20/CAC/PCC(G)/SJ/CBS(Adj) dated: 22.06.2023 under Regulation 14 of the CBLR, 2018. Therefore, I hereby order deemed revocation of the CB License No.11/581 which shall come into force if any contrary decision is taken at any higher appellate forum in the above case.
- (iv) I hereby order that the CB surrender the original License as well as all the 'F', 'G' & 'H' cards issued there under immediately.

This order is passed without prejudice to any other action which may be taken or purported to be taken against the Customs Broker and their employees under the Customs Act, 1962, or any other act for the time being in force in the Union of India.


(SUNIL JAIN)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s Ghanshyam Patel Freight Forw. Pvt. Ltd. (CHA No. 11/581)
16, Orion, 3rd Floor, Oomer Park,
Warden Road, Mumbai – 400036

EM171706488IN

Copy to: -

1. The Pr. Chief Commissioner/Chief Commissioner of Customs, Mumbai I, II, III Zone.
2. All Pr. Commissioners/Commissioners of Customs, Mumbai I, II, III Zone
3. SIIB(I), JNCH.
4. CIU's of NCH, ACC & JNCH
5. EDI of NCH, ACC & JNCH
6. ACC (Admn), Mumbai with a request to circulate among all departments.
7. JNCH (Admn) with a request to circulate among all concerned.
8. Cash Department, NCH, Mumbai.
9. Notice Board
10. Office Copy
11. Guard File (Admin)

